S.B.Civil Misc. Appeal No.498/1994
Ms.Koheera Finishing Centre
vs.
Regional Director,Employees State Insurance Corp. & anr.

Date of Order: 17.10.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. D.K.Parihar for the appellant.
Mr. Sanjay Mathur for the respondent.

Heard learned counsel for the parties.

The present appeal is against the orders of E.S.I.Court,Pali (Civil Judge, Pali) dated 26.5.1994 and dated 30.10.1992.

The only question raised by the appellant in this appeal is that since the appellant's industrial unit was not situated within the Municipal area of Pali, at relevant time, therefore, the authorities had no jurisdiction to raise demand against the appellant under the ESI Act, 1948. On this plea, issue no.1(a) was framed by the ESI Court. The appellant-applicant himself submitted before the ESI Court that the appellant does not want to lead any evidence on issue no.1(a) and, therefore, issue no. 1(a) may be decided as preliminary issue. The ESI Court by order dated 30.10.1992 held that it was the burden upon the appellant to prove that the appellant's unit is situated beyond the territorial jurisdiction of Municipal area Pali and he has not led evidence to prove this fact. The court below also considered the revenue records

and found that from those revenue records also, it is not proved that the appellant's industrial unit is situated beyond the territory of Muncipal area, Pali. Thereafter, the court proceeded to decide other issues for which evidence was recorded and ultimately by order dated 26.5.1994, the court below dismissed the application of the appellant filed under Section 75 of the ESI Act on merit. Hence this appeal.

According to the learned counsel for the appellant, since the appellant's industrial unit is situated beyond the Municipal limit of Municipal Council, Pali, therefore, ESI Court itself has no application over the appellant's industrial unit. The appellant also submitted application under Order 41 Rule 27, C.P.C. before this Court along with this appeal in the year 1994 with a letter of the Municipal Council, Pali dated 27.7.1994 on the basis of which the appellant submitted that his industrial unit is situated not within the area of Municipal Council, Pali.

I considered the submissions of the learned counsel for the parties.

It is not in dispute that the appellant himself did not choose to produce any evidence in support of his plea on issue no. 1(a) that his industrial unit is not situated within the Municipal area of the Municipal Council, Pali. That order was passed on 30.12.1992. The appellant also produced evidence on other issues and thereafter, the court decided against the appellant by the order dated 26.5.1994. Since the appellant

as back as in the year 1992 submitted that he does not want to produce any evidence on issue no.1(a), there appears to be no reason to allow the appellant to produce additional evidence after the decision of the main petition of the appellant in the year 1994. Otherwise also the appellant has not pleaded any ground for allowing his application under Order 41 Rule 27,C.P.C. Therefore, the appellant's application filed under Order 41 Rule 27,C.P.C. is dismissed.

It will be further relevant to mention here that demand raised against the appellant was of the period even prior to 1980. In view of the above, the court below has not committed any error of fact or law in holding that the appellant failed to prove that the industrial unit is not situated within the Municipal limit of Municipal Council, Pali by order dated 30.10.1992. So far as on other issues, the ESI Court has decided the question of fact after appreciation of evidence and no question of law is involved.

Consequently, the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

mlt.